

JUL 17 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket #96-
11-2

In the Matter of:

Request by ALTS for Clarification of
The Commission's Rules Regarding
Reciprocal Compensation for
Information Service Provider Traffic

File No. CPD 97-30

COMMENTS OF
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

The Southern New England Telephone Company (SNET) respectfully submits these Comments regarding the request for clarification of the Federal Communications Commission's (Commission) rules regarding reciprocal compensation for information service provider (ISP) traffic filed by the Association for Local Telecommunications Service (ALTS) on June 20, 1997 (Request).¹ In its Request, ALTS asks the Commission to issue a letter stating that nothing in its Local Competition Order² requires ISP traffic to be handled differently than local traffic with respect to reciprocal compensation arrangements.

In these Comments, SNET argues that the Commission is currently addressing issues regarding the implications of information services and Internet usage and the

¹ FCC Public Notice released July 2, 1997, established that comments are due on July 17, 1997, and Reply Comments are due to be filed on July 24, 1997, File No. CCB\CPD 97-30.

² Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), stayed in part pending judicial review sub nom. Iowa Utils. Bd. v. FCC, 109 F.3d 418 (8th Cir. 1996) (Local Competition Order).

appropriate regulatory treatment of transport services utilized by ISPs in another docket.³

Thus, the Commission should dismiss ALTS' Request. However, if the Commission does not dismiss ALTS' Request, the Commission should affirm that ISP traffic is not subject to reciprocal compensation, as such traffic is interstate in nature. SNET also supports the detailed comments filed by the United States Telephone Association (USTA) in this proceeding.

I. INTRODUCTION

ISPs utilize the public switched network to collect their subscribers' usage to the Internet. ISP subscribers access the ISP by dialing a local telephone number via their personal computer and modem. ISPs purchase flat rated business service lines from various end offices. These lines terminate at an ISP premises consisting of modem banks. The ISP then converts the analog signal to a digital signal and aggregates the traffic onto the Internet. ISPs use these local flat-rated business lines only to receive calls. Thus, ISP calls are one-way to the ISP and are characterized by long holding times.

Under the policy of reciprocal compensation, charges are paid by one facilities provider to another facilities provider for the termination of local calls on the provider's network that did not originate on the same network. The main assumption behind reciprocal compensation is that originating and terminating usage would balance out between the parties. While this is true for traditional voice traffic, it is not true for ISP

³ Access Charge Reform. Notice of Proposed Rulemaking Third Report and Order and Notice of Inquiry. CC Docket No. 96-262, FCC 96-488 (released December 24, 1996) (Internet NOI).

traffic. Since ISP traffic is "terminating only" traffic, compensation flows in only one direction. Reciprocal compensation was not meant to address this "one-sided" situation.

Reciprocal compensation is mandated by both federal and Connecticut state law. Section 251(b)(5) of the Telecommunications Act of 1996⁴ requires all local exchange carriers (LECs) to "establish reciprocal compensation arrangements for the transport and termination of telecommunications," and Section 51.701(a) of the Commission's rules limits this obligation to local telecommunications traffic. The Connecticut Department of Public Utility Control (CDPUC) issued a decision in Docket No. 94-10-02⁵ establishing a reciprocal compensation policy for the state of Connecticut. On May 27, 1997, SNET filed with the CDPUC a Petition for a Declaratory Ruling that the CDPUC's reciprocal compensation policy does not apply to ISP traffic. On June 13, 1997, the CDPUC established a docket to address SNET's Petition. Parties have submitted written comments on specific issues relating to ISP traffic and reciprocal compensation. SNET submits herein, as Attachment A, a copy of SNET's Petition for a Declaratory Ruling filed with the CDPUC.

II. ISP TRAFFIC IS NOT LOCAL TRAFFIC BUT IS INTERSTATE IN NATURE.

Despite the fact that ISPs utilize flat rated business service lines to provide service to their subscribers, ISP traffic is not local traffic. Section 51.701(b)(1) of the Commission's rules defines local telecommunications traffic as "traffic that originates and terminates within a local service area established by the state commission." ISP

⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ DPUC Investigation Into The Unbundling Of The Company's Local Telecommunications Network - Reopened (January 17, 1996).

traffic does not originate and terminate within the same Local Access and Transport Areas (LATAs). Telephone calls to ISPs do not terminate at the point at which they are "handed off" by the LEC to the ISP. These calls are carried across LATA and state boundaries to a remote Internet hub for termination. The fact that an end user can connect to an ISP by dialing a local telephone number does not change the nature of the traffic being carried. Thus, ISP traffic is inherently interstate, interexchange traffic. Reciprocal compensation, therefore, does not apply to ISP traffic.

III. THE COMMISSION HAS CONSISTENTLY VIEWED ISP TRAFFIC AS INTERSTATE IN NATURE

Contrary to the assertions of ALTS, the Commission itself has consistently viewed ISP traffic as interstate in nature.⁶ In the Internet NOI, the Commission noted that ISPs use incumbent LEC local exchange facilities to originate and terminate interstate calls.⁷ Furthermore, the Commission has found that the jurisdictional nature of traffic is determined by the end-to-end configuration of the call, and not any intermediate switching and/or transport.⁸

It is also important to note that, although the Commission has exempted Enhanced Service Providers, including ISPs, from paying interstate access charges, it did not do so because it views ISP traffic as local traffic. The Commission exempted ISPs from access

⁶ See 97 FCC 2d 682, 711-12 (1983); 2 FCC Rcd 4305, 4306 (1987); 6 FCC Rcd 4524, 4534-35 (1991).

⁷ See Internet NOI, ¶ 284.

⁸ See Order Designating Issues for Investigation, CC Docket No. 88-180 (released April 22, 1988). See also NARUC v. FCC, 746 F.2d 1492 (1984) (use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them).

rates in an effort to foster the growth and development of the Internet and other information services. As the Commission itself has stated:

We think it possible that had access rates applied to ISPs over the last 14 years, the pace of development of the Internet and other services may not have been so rapid. Maintaining the existing pricing structure for these services [i.e. exempting ISP traffic from access charges] avoids disrupting the still-evolving information services industry and advances the goals of the 1996 Act to “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”⁹

Indeed, the very fact that the Commission created an “exemption” for ISP traffic from the access charge regime indicates that ISP traffic is, in fact, interstate in nature. That is, if ISP traffic were local traffic, then the Commission would have no need to carve out an exemption for ISP traffic, because such traffic would not fall under the access charge regime in the first place.

Similarly, the fact that ISPs purchase services from incumbent LECs via intrastate tariffs does not prove that such traffic is intrastate in nature. The Commission has allowed ISPs to purchase their services in the form of business lines, rather than via interstate access rates, simply because business line rates are significantly lower than the equivalent interconnection access charges.¹⁰ Again, the Commission made this decision simply to enable the Internet and other information services to develop and grow, and to encourage investment in these mediums of communication. Thus, neither the fact that

⁹ In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-262, ¶ 344 (released May 17, 1997) (Access Charge Order).

¹⁰ Access Charge Order, ¶¶ 342-343.

ISPs are exempt from paying access charges, nor the fact that ISPs purchase services via intrastate tariffs, proves that ISP traffic is local in nature.

VI. CONCLUSION

The Commission is currently reviewing issues regarding the implications of Internet usage and the proper regulatory treatment of transport services used by ISPs in another proceeding. Thus, ALTS' Request should be dismissed. If, however, the Commission does not dismiss ALTS' Request, it should re-affirm its long-standing policy that ISP traffic is interstate in nature and is not, therefore, subject to reciprocal compensation.

Respectfully submitted,

THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY

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July 17, 1997

ATTACHMENT A

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL**

**PETITION OF THE SOUTHERN NEW ENGLAND : DOCKET NO.
TELEPHONE COMPANY FOR A DECLARATORY :
RULING CONCERNING INTERNET SERVICES :
PROVIDER TRAFFIC : MAY 27, 1997**

I. BACKGROUND OF PETITIONER

1. The Southern New England Telephone Company ("SNET" or "Company") submits this Petition for A Declaratory Ruling ("Petition") to the Connecticut Department of Public Utility Control ("Department" or "DPUC") pursuant to Connecticut General Statutes ("Conn. Gen. Stat.") §4-176, the Uniform Administrative Procedure Act ("UAPA") and Regulations of Connecticut State Agencies ("Conn. Agencies Regs.") §16-1-113 et seq.

2. The exact legal name of Petitioner and its principal place of business is as follows:

The Southern New England Telephone Company
227 Church Street
New Haven, Connecticut 06510

3. The names, titles and telephone numbers of the attorneys or other person to whom correspondence or communications with regard to this application are to be addressed is as follows:

Kathleen A. Carrigan
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II. STATEMENT OF REQUEST

4. SNET submits this Petition to seek a declaratory ruling from the Department that the Department's Decision in Docket No. 94-10-02, DPUC Investigation Into The Unbundling Of The Company's Local Telecommunications Network - Reopened (January 17, 1996), governing mutual compensation, does not apply to Internet Service Provider ("ISP") traffic.

III. SUPPORTING FACTS

5. ISPs use the public switched network to collect their subscribers' usage to the Internet. To access an ISP, the subscriber uses a personal computer and modem to dial a local telephone number. This local telephone number allows the ISP subscriber to access the Internet without any long distance charges, and in most cases, without any usage charges.

6. In order to provide service to its Internet subscribers, the ISP orders local flat rated business service lines from various end offices. The local lines terminate at an ISP premise consisting of modem banks. The ISP converts the analog signal to digital and aggregates the traffic onto the Internet.

7. With these local lines, the ISP is purchasing local numbers that cover all of the local calling areas the ISP wishes to serve. For example, in Connecticut, an ISP can provide statewide access toll free by purchasing local lines from just 13 local exchanges.

8. ISPs publish a main telephone number for ISP subscribers to dial, and frequently place these lines in hunting arrangements to handle call overflow. ISPs use the

local flat-rated business service lines only to receive calls, and ISP's subscribers use flat rate lines to reach the ISP.

9. The ISP calls are one way to the ISP with long holding times during a few busy hours.

10. To meet the increased traffic loads associated with ISP traffic, central office equipment must be reengineered and new equipment added.

11. Within the last twelve months, 260 new trunks, that can be directly attributed to ISP demand, have been added to the network, with an associated incremental investment of \$3 million for switching and transport facilities.

12. Moreover, over the past two months three certified local exchange carriers ("CLECs") have requested that SNET initiate trunk orders to support different ISP applications that require implementation over the next few months.

13. One of the applications would increase the total required capacity for all calls towards the CLEC from 36 trunks to 708 trunks.

14. On January 17, 1996, the Department issued its Decision in Docket No. 94-10-02. The Decision, among other things, addressed the issue of mutual compensation.

IV. ARGUMENTS

ISP TRAFFIC IS TERMINATING ONLY TRAFFIC AND THEREFORE DOES NOT FALL WITHIN THE TRADITIONAL SERVICES MUTUAL COMPENSATION WAS TO ADDRESS.

15. The Decision in Docket No. 94-10-02 defines mutual compensation as "the charges paid to one facilities provider by another facilities provider for completion or termination of local calls on the provider's network that did not originate on the same network." Decision at 57.

16. The Department's mutual compensation proposal as established in the Decision in Docket No. 94-10-02 applies to local traffic.

17. Local calls are those calls that originate and terminate within the same Local Access & Transport Area ("LATA"). "[L]ocal service' shall be a tariffed service that offers a subscriber access to a pre-subscribed set of [] central office prefixes (NXX's) to be determined by each respective provider without imposition of any additional charge associated with distance." Decision at 85.

18. The Decision in Docket No. 94-10-02 provides that:

[A]n interconnected carrier that assumes the responsibility for completing any other originating carrier's traffic will incur certain financial and operational obligations to satisfy its market obligations To ensure that financial commitments to investors are satisfactorily met, each local service provider, like the competitive interstate toll carriers before it, must endeavor to recover its costs no matter where the traffic originates.

Decision at 67-68.

19. The Department concluded that "consideration by this Department of some form of mutual compensation between LECs and CLECs is critical to the achievement of effective competition and is of interest to the public of Connecticut." Decision at 68. The Department made clear, however, that "any compensation method approved for adoption by the Department cannot knowingly provide any individual party or group of participants a competitive advantage by the unwarranted use of the mutual compensation plan's terms and conditions." Decision at 68.

20. The Department further held that it will reconsider its mutual compensation policy "[i]f any party subsequently can show harm that has been directly imposed by misuse, abuse or other unintended use of the plan to preclude effective competition" Decision at 68.

21. The Department continued that:

[It] cannot knowingly adopt a philosophy that provides any user a 'free ride' or accords any provider an unwarranted competitive advantage by exploiting loopholes in any Departmental policy. Any policy which prospective entrants to the market view as an unfair opportunity to succeed is as objectionable to this Department as any effort by an individual to impose unreasonable barriers to effective competition. 'Free rides' will discourage future infrastructure enhancement and effectively reduce the public benefits of competition in all aspects of telecommunications.

Decision at 70 (emphasis added).

22. The main assumption of mutual compensation is that originating and terminating usage would balance out between the carriers. Any imbalance or difference in that traffic would be periodically settled by a payment from one carrier to the other.

23. ISP traffic is "terminating only" traffic, similar to 800 traffic. Should the ISP obtain its local access line service from a CLEC, the vast majority of the traffic to the ISP would originate on SNET's network and terminate on the network of the CLEC. However, since an ISP does not originate traffic, the CLEC serving that ISP would never have to compensate SNET.

24. Telephone calls to ISPs do not terminate in the LATA where the ISP's facilities and databases are located; such calls are carried across LATA boundaries over the Internet to locations beyond Connecticut. ISP traffic, therefore, is not local but is inherently interstate, interexchange traffic.

25. The Federal Communications Commission ("FCC"), while exempting Enhanced Service Providers, including ISPs, from the payments of interstate access charges, has consistently viewed ISP traffic as interstate in nature. See 97 FCC 2d 682, 711-12 (1983); 2 FCC Red 4304, 4306 (1987); 6 FCC Red 4524, 4534-35 (1991).

26. In its recent Notice of Inquiry, FCC 96-488 (December 24, 1996) ("NOI") the FCC noted that ISPs use incumbent LEC local exchange facilities to originate and terminate interstate calls. NOI ¶284.

27. Mutual compensation is designed to compensate a terminating carrier for its costs in terminating traffic, costs that would otherwise go unrecovered. In the case of ISP traffic, either the ISP compensated the CLEC serving the ISP from the rates charged the subscriber or SNET subsidizes the CLEC's costs in providing service to the ISP, or both. Allowing a carrier to be compensated through mutual compensation for costs it is

already recovering would be an unintended use of the Department's mutual compensation policy and would grant those carriers serving ISPs an unwarranted competitive advantage.

28. Moreover, no party to Docket No. 94-10-02 envisioned application of mutual compensation to large volumes of Internet traffic. This is evidenced by the CLECs' promotion of a Bill & Keep mechanism. Had CLECs anticipated application of mutual compensation to ISP traffic they never would have: (1) argued that traffic would over time achieve a state of balance; (2) supported Bill & Keep; and (3) argued that SNET's proposed minute of use rates were too high, but rather would have consented to a high minute of use rate. In fact, the CLECs are now arguing for higher rates because of the ISP traffic.

29. The application of mutual compensation to ISP traffic would mean that the three CLEC requests referenced in Paragraph 12, would obligate SNET to purchase and pay for 3,792 additional interconnect trunks to the CLECs' switches. In addition, SNET would pay the CLEC for the termination of those ISP calls originated from an SNET local customer. Since this traffic is originating only, SNET potentially would be liable to pay those CLECs approximately \$3 million per year in mutual compensation.

30. Another significant SNET cost is the network investment for trunks, switch modules and facilities to route the ISP calls from SNET's originating end offices to the SNET tandem that is interconnected to the CLEC.

31. ISP traffic, whether terminating to ISPs on SNET's network or a CLEC's network, does not fall within the definition of the traditional services mutual compensation was to address.

32. In sum, subjecting ISP traffic to the Department's compensation plan would allow terminating carriers serving ISPs to avail themselves of a loophole and would constitute a free ride.

V. **REQUESTED PROCEDURE**

33. Due to the pending CLEC requests to SNET to initiate trunk orders to support different ISP applications, SNET requests expedited consideration of the Petition.

34. Conn. Gen. Stat. §4-176 and Conn. Agencies Regs. §16-1-115 set forth the procedures to be followed in response to a petition for declaratory ruling. SNET respectfully requests that the Department notify all interested parties of this Petition.

Respectfully submitted

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